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Eighth periodic report of States parties due in 2015

Kenya*

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Abbreviations

AGPO	Access to Government Procurement Opportunities
ASDS	Agricultural Sector Development Strategy
CAJ	Commission for Administrative Justice
CDF	Constituency Development Fund
CIC	Constitutional Implementation Commission
CKRC	Constitution of Kenya Review Commission
CoK	Constitution of Kenya
CPPMUs	Central Planning and Project Monitoring Units
CIPEV	Commission of Inquiry in the Post-Election Violence
CSO	Civil Society organizations
C-WES	Constituency Women Enterprise Scheme
DRH	Division of Reproductive Health
ECD	Early Childhood Development
ECE	Early Childhood Education
EEP	Economic Empowerment Programme
ERS	Economic, Recovery Strategy
FGM	Female Genital Mutilation
GBV	Gender Based Violence
GDI	Gender Development Index
GER	Gross Enrolment Rate
GII	Gender Inequality Index
FPE	Free Primary Education
GRB	Gender Responsive Budgeting
GSCG	Gender Sector Coordination Group
HAK	Health care Assistance Kenya
HDR	Human Development Report
ICPD	International Conference on Population and Development
IDLO	International Development Law Organization

IEBC	Independent Electoral and Boundaries Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IPPG	Inter Party Parliamentary Group
KCSE	Kenya Certificate of Secondary Education
KCPE	Kenya Certificate of Primary Education
KDHS	Kenya Demographic and Health Survey
KESSP	Kenya Education Sector Support Programme
KEWOPA	Kenya Women Parliamentary Association
KHDR	Kenya Human Development Report
KNASP	Kenya National AIDS Strategic Plan
KNBS	Kenya National Bureau of Statistics
KNEC	Kenya National Examination Council
KNICE	Kenya Integrated Civic Education
KNHCR	Kenya National Human Rights Commission
KNHREC	Kenya National Human Rights and Equality Commission
LATF	Local Authority Transfer Fund
LFP	Labour Force Participation
MCAs	Members of County Assemblies
MDAs	Ministries, Departments and Agencies
MDGS	Millennium Development Goals
MDP	Ministry of Devolution and Planning
MoEST	Ministry of Education Science and Technology
MMR	Maternal Mortality Rate
MSE	Micro and Small Enterprise
MSSG	Multi-Stakeholder Support Group Forum
MTEF	Medium-Term Expenditure Framework
MTP	Medium-Term Plan
NAAP	National Affirmative Action Policy
NAAIAP	National Accelerated Agricultural Inputs Access Programme

NACAF	National Committee on Abandonment of Female Genital Mutilation
NALEP	National Legal Awareness Programme
NASCOP	National Aids and STI Control Programme
NCAPD	National Coordinating Agency for Population and Development
NER	Net Enrolment Rate
NESP	National Education Sector Plan
NHSSP	National Health Sector Strategic Plan
NITA	National Industrial Training Authority
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organization
NPA	National Plan of Action
NSNP	National Safety Net Programme
NSUP	National Slum Upgrading and Prevention Policy
NUDP	National Urban Development Policy
NYS	National Youth Service
OVC	Orphans and Vulnerable Children
OSH	Occupational Safety and Health
PRSP	Poverty Reduction Strategy Paper
PWD	Persons With Disabilities
SACCO	Savings and Credit Co-operatives
SGBV	Sexual and Gender-Based Violence
SOA	Sexual Offences Act
SMT	Science, Mathematics and Technology
SOP	Standard Operating Procedures
STEM	Science, Technology and Mathematics
TIVET	Technical, Industrial and Vocational Education Training Institutions
TNI	Tasaru Ntomonok Initiative
TSC	Teachers Service Commission
UN	United Nations
UNDAF	United Nations Development Assistance Framework

UNDP	United Nations Development Programme
UNECOSOC	United Nations Economic and Social Council
UNECA	United Nations Economic Commission for Africa
UPE	Universal Primary Education
WEF	Women Enterprise Fund
WHO	World Health Organization
YEDF	Youth Enterprise Development Fund

Introduction

1. **Methodology**: The 8th periodic report of the Republic of Kenya on implementation of the Convention on Elimination of All Forms of Discrimination against Women has been prepared under the auspices of Gender Directorate in the Ministry of Devolution and Planning. The preparation was both participatory and consultative where inter-ministerial representatives, the Civil Society Organizations, research and academic institutions as well as the international organizations operational in Kenya were engaged on contextualizing the meaning and applicability of CEDAW provisions in Kenya.

2. To broaden the consultative process, written memoranda were invited from Human Rights bodies and Women's organizations familiar with CEDAW and have closely monitored state's commitment to the implementation of the convention. A technical team drawn from the state and non-state actors was constituted to review and harmonize the submissions across legislative, administrative, judicial and other socioeconomic facets. A national workshop with multiple Human Rights, State agencies and civil society bodies, research and academic institutions was convened to validate the outcome of the reviewed documents and align the same to CEDAW reporting format. The 8th periodic report therefore covers the period of May 2009, to December 2013; however, relevant achievements complimentary to the report contents beyond the stipulated period have been included to help solidify continued government commitment on Convention implementation.

3. **Progressive legal context**: The 2010 Kenyan constitution[1] has been lauded as one of the most progressive in the world for its inclusive and comprehensive bill of rights, decentralization of power, reserved legislative seats for youth and persons with disabilities and several new, independent commissions. It also includes important provisions related to gender equality. In addition to granting women equal inheritance rights and making laws related to marriage and custody of children more equitable, it prohibits elected bodies from being overly dominated by one gender.

4. **Subsequent gender-aware legislations**: The Political Parties Act of 2011[2] extends the two-thirds rule to parties' membership lists and governing bodies.

5. **Elections**: The General Elections of 4 March 2013 also form a significant context for the 8th periodic report. More specifically, it was conducted in an environment compounded by constitutionally secured affirmative elective seats for women, a six-tier election process at one-go, the ushering in of devolved government architecture, and generally new constitutional dispensation order.

6. The 8th Periodic report outlines the progress, gaps and strategic way forward on article by article on CEDAW implementation since the submission of the 7th periodic report.

[1] In August 2010 Kenya successfully promulgated a new Constitution. This was the culmination of a long struggle for a Constitution that would be responsive to the social, economic and political needs of the people.

[2] An ACT of Parliament to give effect to the Constitutional provisions relating to political parties; provide for the registration, regulation, and funding of political parties and for connected purposes.

Article 1: Definition of discrimination

7. **Legislation**: Kenya's Constitution 2010 has a strong focus on equality, a much improved right to non-discrimination, and special provisions on the protection of rights for particular groups vulnerable to discrimination.

8. **Domestication of International law/treaties**: Section 2(6) of the Constitution of Kenya provides for the domestication and applicability of CEDAW provisions by providing that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.

9. **The Treaty making and Ratification Act 2012** confirms that Kenya still maintains the discretion to implement international laws through parliament, offering Kenyans the comfort that international norms and practices that are contrary to the peoples beliefs and customs can be avoided through parliamentary intervention through Article 94(5)[3] of the Constitution.

10. **Non-discrimination in governance**: The Government of Kenya has entrenched non-discriminatory governance architecture in law and practice. In respect to Article 10(2)(b) of the Constitution of Kenya states that national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized and in land and property in Kenya.

11. **The Judiciary Transformation Framework, 2012-2016**: The framework operates under four pillars: People-focused Delivery of Justice, Transformative Leadership, Organizational Culture and Professional Staff, Adequate Financial Resources and Physical Infrastructure and Technology as an Enabler[4], all of which are aimed at enriching the jurisprudence process including cases touching on rights violation. More importantly, the Judiciary Training Institute was repurposed to drive continuing learning, research and the development of a robust, indigenous and patriotic jurisprudence. It is the latter that aims at eliminating restrictive interpretation of the provisions of the Constitution that has in the past suffered a patriarchal view before courts of law. It is largely expected that training of magistrates and judges on international treaty cross-references and application will widen enjoyment of rights especially those already domesticated as CEDAW.

12. An example of application of CEDAW is **the Constitutional Petition Number 160 of 2013: Rose Wangui Mambo and 2 others Vs. Limuru County Club and 17 others.**

13. **Jurisprudence compliance with CEDAW in the case**: CEDAW Article 1 definition of discrimination against women can be seen unequivocally that the by-law that was being passed clearly distinguished between the sexes of the parties hence falling under the ambit of negative discrimination. Besides, the law therefore stood to in violation of the constitution and in particular Article 27 of the Constitution of Kenya

[3] Article 94(5) (5) No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.

[4] Justice Kalpana Rawal (2013). Constitutional and Judicial Reforms: The Kenya Experience. Presented at the Southern African Chief Justices' Forum Annual Conference.

14. The sections within the Penal code that perpetuated discrimination on the basis of gender Caps 170, 172 and 173 have since been repealed by the Kenya Citizenship and Immigration Act 2011. The Government has audited the Laws and amended discriminatory clauses as evidenced in the review of Section 38 of Sexual Offences Act of 2006.

15. **Accession to the Optional Protocol (2000)** on CEDAW: The Government of Kenya has committed to acceding to the optional protocol to CEDAW to allow individuals violated to access the CEDAW committee after exhausting domestic remedy. This process is being spearheaded by the Department of Justice under the office of the Attorney General.

16. **Challenge**: The subsequent legislations have remained gender neutral in their language making it difficult to deal with discrimination in situations where the law fails to categorize discrimination as an offence.

Article 2: Measures for elimination of discrimination against women

17. **The Government of Kenya has initiated legislative, administrative, judicial measures in curbing discrimination against women across the sociocultural, political and economic spheres**. More significant were the changes instituted by the CoK (2010): through Articles 59, 59(2), and Article 59(3).

18. **Draft Gender Policy framework 2011**: The draft Policy under review was developed in July 2011 to update the National Policy on gender and Development of 2000. The policy framework was developed with an overall goal of mainstreaming gender concerns in the development process in Kenya in order to improve the social, legal, economic, and cultural conditions for women, men, girls, and boys. The implementation of the policy remains a significant step to the welfare of women since it envisages various principles for enhancing women's status at the two levels of Government:

19. **Marriage Act (2014)** seeks to eliminate social inequality between men and women in marriage in the context of Kenya. The Act provides that parties to a marriage have equal rights and obligations at the time of the marriage, during the marriage and at the dissolution of the marriage 3(2). The Act provides that all marriages will be issued with marriage certificates, including customary marriages.

20. **Women and land entitlements**: Kenya's Constitution and the three laws adopted in 2012 (the National Land Commission Act, the Land Act and the Land Registration Act) are significant improvements with respect to women's rights to land.

21. **Realizing women's land rights in partnership with non-state actors**: A project was initiated on Enhancing Customary Justice Systems in the Mau Forest, Kenya, where local administration partnered with USAID/Landesa. This project focused on bridging the gap between formal and informal justice systems at the local level, with a particular focus on women's land rights. As a result of the project, there is a harmonization of traditional and statutory justice systems and the traditional chiefs now require spousal consent for all land transactions. Moreover, two of the Ol Pusimoru sub-locations have elected 14 women elders out of 50: this is the first case of women being elected as elders within the Maasai and Kalenjin communities.

22. **Amendment to Sexual offences Act (2006)**:[5] The Government repealed Section 38 of the Sexual Offences Act under which women face the risk of being victimized for initiating prosecutions against their abusers as of June 2012. Victims of sexual offences whom majority happen to be women are now able to report cases of sexual violence without fear of criminal sanctions. In addition, Regulations required for the implementation of the Sexual Offences Act have been passed.

23. **Victim protection Act 2013**: gives effect to Article 50(9) of the constitution requiring that parliaments enacts legislation providing for the protection, rights and welfare of victims of offences.

24. In addition, **the Act establishes a Victim Protection Board** which plays an important role in policy development and Victim Trust Fund to cater for expenses arising out of assistance to victims of crime.

25. **Equalization fund policy**: Kenya's Equalization Fund, created in Article 204 of the Constitution (2010), is an important opportunity for the country to contribute to redressing ethno-regional economic inequalities.

26. **Provision of basic needs through equalization fund**: Article 204(2) specifies that the fund is an earmark for use only to provide basic services among them: water, roads, health services, and electricity.

27. **Non-discrimination in the field of work**: This is addressed in Article 27 of the Constitution, including (section 5). Anti-union discrimination is also prohibited under section 5 of the Labour Relations Act. 31. **Non-discrimination against women with disabilities** provisions are entrenched in the Persons with Disability Act (2003).

28. **Jurisprudence in compliance with CEDAW on transgender**: This has been applied in the high court of Kenya at Nairobi judicial review division jr case no 147 of 2013, Republic v Kenya National Examinations Council and another ex-parte Audrey Mbugua Ithibu.

29. **Challenge on FGM abandonment efforts**: Cultural resistance from traditional practicing communities has a posed a major setback to the realization of the provisions of the Prohibition of FGM Act. The National Government working with County governments in supporting initiatives on ending harmful traditional practices and facilitating grass-roots efforts that focus on changing the mindset of practicing communities. One such initiative is the Tasaru Ntomonok Initiative (TNI). TNI was instrumental in the conviction of the father of 12 year old Sasiano Nchoe who bled to death following the practice, together with her circumciser. The unprecedented court ruling that took place in 2010, was based on the Children's Act of 2001.

30. **Challenge with Marriage Act (2014)**: The Marriage Act however not only recognizes polygamous marriages but also allows the man to marry another wife without the first one's consent. This is seen to contravene Article 45(3) of the Constitution that states that Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage. There is urgent need to bring those laws and customs in conformity with the Constitution.

[5] The provision states: "[a]ny person who makes false allegations against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment equal to that for the offence complained of." (Act No. 3 of 2006 — Sexual Offences Act (in force July 21, 2006).

31. **Challenge on women's land and property ownership**: Land administration and management structures tend to be dominated by men at national and various sub-national government levels. Women's participation in decision-making processes is pivotal in addressing gender inequality in the land sector. To this end, the Government will not only create awareness on the provisions but also partner with advocacy organizations that have initiated the formation of community land and property "watch dog groups" to monitor and try to prevent property stripping from widows and orphans, thus working towards the achievement of tenure security for vulnerable members of the community besides facilitating paralegal trainings for the members.

Article 3: Measures for development and advancement of women

32. Following the promulgation of the 2010 Constitution, the Government established the Constitutional Implementation Commission (CIC), under the Constitutional Implementation Commission Act, 2011 to ensure that the letter and the spirit of the Constitution is respected.

33. **Establishment of Rights Commissions**: The Kenya National Human Rights Commission (KNHCR), the National Gender and Equalities Commission (NGEC), and the Commission on Administrative Justice (CAJ or the office of the ombudsman) were established pursuant to Article 59 of the Constitution,

34. **The Directorate** of Gender in the Ministry of Devolution and Planning which is under the Presidency established through executive order of May 2013, and tasked with the responsibility for overall coordination of gender mainstreaming in national development, formulation, review and management of gender related policies, negotiations, domestication and reporting on gender related international and regional treaties and promotion of equitable socioeconomic development between men and women. Under this structure, Gender Officers have been deployed to all Ministries and are situated in Central Project Planning and Monitoring Units (CPPMU) to provide technical guidance on gender mainstreaming. At the devolved level, Youth Officers at the County and sub-county levels have been assigned additional responsibilities for coordinating gender mainstreaming and women's empowerment.

35. National Gender and Equality Commission **and application of gender-principle on appointive positions**: The NGEC interrogated all levels of government with regard to appointive positions. For example, the Commission was concerned with the National Government's first extensive list of nominees for ambassadorial positions in August 2014 on the two-thirds gender principal, leaving out persons living with disabilities. Part of the public concerns stemmed from the fact that the Supreme Court had ruled almost two years before in December of 2012 that the two-thirds principal was to be applied gradually.

36. **Performance Contract Monitoring Tool**: The Government through the Directorate of Gender in the Ministry of Devolution and Planning in collaboration with National Gender and Equality Commission developed a Reporting Tool that is used by the Public Sector to report on Quarterly and Annual basis Gender Mainstreaming. The tool captures among other things: continuous gender training and sensitization of employees on gender mainstreaming; baseline and benchmark on compliance level with the 2/3 gender representation policy on appointments, employment and promotions in the Public Service as per the Constitution; baseline

and benchmarks measuring progress of the number of women-led, youth-led and PWDs-led enterprises accessing 30 per cent public procurement tender opportunities; proportion of ministerial sector plans subjected to sex disaggregated benefit incidence analysis as well as development and implementation of the ministerial policy in line with the National Gender and Development Policy to guide the gender mainstreaming activities.

37. **Article 4 provides that the adoption by states of temporary measures** aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in CEDAW, but shall in no way entail as a consequence the maintenance of unequal or separate standards; and these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. Further, adoption by states of special measures including those contained in CEDAW, aimed at protecting maternity shall not be considered discriminatory. Article 4 therefore requires a broad understanding of discrimination, based primarily on the disadvantage that people may suffer as result of discrimination. In this sense, where the state takes measures to address the disadvantage suffered by women, but which in turn may lead to the differential treatment of men and women, this should not be considered discrimination, within the meaning of the Convention. Thus, equality should not only be provided for within the law (de jure) but should also be promoted in fact.

38. ***In a suit filed by the Attorney General in the Supreme Court (Advisory Opinion No. 2 of 2012)***, seeking an advisory opinion on the implementation the of the two-third gender principle under Articles 81, 27(4), 27(6), 27(8), 38, 96, 97, 98, 177(1), 116, 125 and 140 of the Constitution, the CIC, NGEC and CAJ were enjoined as interested parties. Each of these commissions were categorical that this principle should be implemented immediately, thereby impacting the 2013 general elections by ensuring that more women would hold political office. CAJ went further to demonstrate the ways in which Parliament had impeded the implementation of this rule, by removing the provisions which would ensure the implementation of Article 81(b) and by rejecting proposals to amend the Constitution to allow for implementation of the two thirds gender principle.

39. The Honourable Attorney General has established a technical working group to develop a framework for the implementation of the two-third gender rule by August 2015. Further to this, the Government Commissioned an independent analysis of the Supreme Court Ruling on the realization of the 2/3 gender which recommended the formulation of an equality policy among other alternatives. The Directorate of Gender is in the process of formulating the Policy to guide the two-thirds gender rule in public institutions.

40. **Women's participation in socioeconomic development**: The second Medium Term Plan (2013-2017) emphasize gender mainstreaming and the empowerment of women as key priorities in ensuring equality between men and women in access to economic, social and political opportunities. The MTP-II recommends that, as part of gender mainstreaming, gender disaggregated data is critical in guiding policy decision making. To this end, the strategy proposes to collect, analyse and utilize gender disaggregated data to update the gender development index, further the Gender Research and Documentation Centre is operational spearheaded by the Gender Directorate.

41. **Government allocation to WEF**: The Government of Kenya through the Treasury has to date (2014) allocated **Kshs. 4.5 billion (USD 50.6 Million) of WEF**. These funds have benefitted 864,920 women who have borrowed over Kshs. 4.5 billion (USD 50.6 Million) while over 404,800 women have been trained on business management skills, sensitization and registration of 52 Savings and Credit Co-operatives (SACCOs), use of mobile phone loan repayment, partnership with private-public non-state actors. The loan repayments have been impressive at 89 per cent group loan and 99.8 per cent through financial intermediaries largely due to business skills trainings afforded to loanees before any monetary advancement i.e., financial literacy. To broaden the reach to a majority of women across the country, WEF has been devolved across the 290 Constituencies.

42. **The UWEZO Fund**: This was established in 2014 by the Government and aims at empowering youth and women and persons with disabilities by providing interest-free loans as start-up capital for small and micro business of varying amounts not exceeding Kshs. 500,000 (USD 5,682). Kshs. 500 Million is used for capacity-building of groups to equip recipients with skills and market linkages necessary to manage group enterprises.

43. **Government allocation to UWEZO fund**: The fund adopts a hybrid concept of the table banking and revolving funds, designed to ensure that women, youth and persons with disabilities are able to employ availed resources for credit, while similarly promoting and sustaining a savings culture. Total funds set aside for this is Kshs. 6 billion (USD 68.18 million).

44. **The Youth Enterprise Development Fund (YEDF)** is a Government initiative established in 2006 with the aim of reducing unemployment among the youth (both women and men) who account for 61 per cent of the unemployed in Kenya. The Fund's strategic focus is on enterprise development as a key strategy for increasing economic opportunities for and participation by the youth in nation building.

45. **The 30 per cent procurement affirmative action**: The Government has introduced the 30 per cent affirmative action policy for women, youth and persons with disabilities in public procurement. Under this provision, women, youth and persons with disability are given preference for 30 per cent of public procurement tenders. According to the Public Procurement and Disposal Preference and Reservations Amendment Regulations, 2013, a procuring entity shall allocate at least 30 per cent of its procurement budget for the purpose of procuring goods, works and services for micro and small enterprises owned by women, youth and PWDs. This translates to a minimum of USD 2.4 billion per year worth of business from the Government to women, youth and people with disability. The Government monitors the implementation of this policy through the various Ministries and agencies' Performance Contracts. In addition, the Government has introduced a Bill (Access to Government Procurement Opportunities (AGPO)) to entrench the practice into law for women youth and persons with disability. Once it is enacted into law it will be implemented at the national and devolved level. The development of the Bill is anchored on Article 227 of the Constitution.

46. **Huduma Centres (Service Delivery Centres)**: The Government has set up service centres that bring together a multiplicity of essential services offered by different government departments under one roof and closer to the keeper. Some of the services available include the issuance of birth certificates, national identity

cards, passports, registration of business names, and applications for marriage certificates, drivers' licenses, police abstracts. This enables women to register their businesses and obtain their licences in a timely manner.

47. **The Social Protection Fund**: The Fund was established in a bid to attain a meaningful and better quality of life for poor and vulnerable individuals by transferring a monthly stipend to the poor and vulnerable households with older citizens of 65 years and above. Other Social Protection interventions include Orphans and Vulnerable Children cash transfers and to residents of urban informal settlements. Devolved funds have been instituted to ensure equal distribution of national resources.

48. **Legislative measures**: Legislative and policy measures include the adoption of the National Land Policy which recognizes women's rights to own property and the enactment of the Gender laws which include the Matrimonial Property Act, 2013 and the Marriage Act 2014. The Counter-Trafficking in Persons Act 2010, the Prohibition of Female Genital Mutilation (FGM) Act 2011 and the Sexual Offences Act 2006 outlaw specific forms of violence against women. The Kenya Citizenship and Immigration Act, 2011 provides for dual citizenship (section 8) and for the first time, married women can confer citizenship to their foreign husbands (section 11).

49. **Challenge on Law de Jure and de facto**: Currently, both de facto and de jure equality are a challenge in Kenya. The constitutional provisions which would require that no more than two-thirds of a gender in elective or appointive offices are yet to be realized. The various commissions are working together with the legislature and non-state actors in finding the preferred formula for realization of this principle before August 2015 as set by the Supreme Court ruling in 2012.

50. **Another challenge is the under-representation** of Women in Devolved Funds Committees. There is insufficient representation of women in management committees of devolved funds whose main objective is poverty eradication such as in the Constituency Development Fund (CDF) Fund and LATF (Local Authority Transfer Fund).

Article 4: Adoption of temporary special measures to accelerate de facto equality between men and women

51. **Legislation**: The preamble to the Constitution of Kenya lists equality as one of six essential values upon which governance should be based as expressed in Article 10 and further emphasized in Article 20(4) (a) and Article 21(3) which creates a duty on state actors to address the needs of "vulnerable groups" in society.

52. **Free maternal care provision**: On 1 June 2013, introduced free maternity services in all public facilities and in July 2013, committed Sh3.8 billion to fund the free maternal health-care programme, with an additional Sh700 million for free access to health centres and dispensaries, Sh3.1 billion for recruitment of 30 community nurses per constituency, Sh522 million for recruitment of 10 community health workers per constituency, and Sh1.2 billion for provision of housing units to health-care workers, within its overall allotment of Sh10.6 billion for health care in the 2013/14 national budget.

53. **The Beyond Zero Campaign**: is an initiative of the First Lady in HIV control and promotion of maternal, newborn and child health in Kenya that was unveiled on

World AIDS Day 2013. The framework aims to galvanize high-level leadership in ending new HIV infections among children and reducing HIV related deaths among women and children in Kenya. The strategic framework focuses on five key areas.

- The initiative has so far attracted development partners and private sector organizations who pledged funds to purchase mobile clinics that will provide integrated HIV, maternal and child health outreach services in the country. The Government has invested in 2014 an estimate of US$ 400 million towards initiatives to reduce HIV transmission and maternal and child mortality, to increase the number of skilled health-care providers and to equip the existing facilities with relevant supplies.

54. **Temporary special measure in education**: In order to meet policy objectives, especially those related to equity and equality in education, the Government supports affirmative action in provision of education at all levels. This comprises: providing support to poor and disadvantaged students through secondary school bursaries, providing support to targeted boarding schools in arid and semi-arid areas and other deserving areas, especially for girls, ensuring the re-entry of girls who drop out of school due to pregnancy and early/forced marriages as well as sensitizing stakeholders and communities to discard sociocultural practices that prohibit effective participation of girls and boys in secondary school education and enforce legislation against the violation of children's rights.

55. **Sanitary towels provision**: The Government has set aside funds to provide sanitary towels for girls in poor and marginalized areas as the lack of sanitary towels among poor girls was identified as one of the obstacles to girl child education since such girls would be forced to stay away from school during their monthly periods.

56. **GBV Hotline 1195 and referral mechanism** — toll free line that offers response to GBV victims: This National Domestic Toll Free Short Code was allocated to Health-care Assistance Kenya by Communication Authority of Kenya and launched on 21st February 2013. The Toll free helpline 1195 enhances support for survivors of rape, defilement, FGM and physical assault. A Data Sheet was also introduced at the launch that gives sex disaggregated data on all forms of Sexual and Gender Based Violence (SGBV) in Kenya.

57. **Participation as a national value**: As national value, the law directs state organs, state officers, public officers and all persons to uphold patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people (Article 10 (2a)). There is also a call for inclusion of the people in all matters that affect their welfare. Participation through representation is nuanced in the Parliament (Articles 90, 97 and 98), National government (Article 130(2)) and the County government (Article 177(1); 197(2)). These provisions cut across elective and appointive positions and aim at achieving full diversity of the nation across ethnic, age, minority and gender considerations.

58. **Challenges**: A number of initiatives have remained under-funded however the Government is bridging the gaps through Public Private Partnership to raise capital and working with bilateral donors.

59. **Another challenge** has been insufficient gender and sex-disaggregated data to inform the intervention. The Government through the Gender Directorate has

adopted the production of disaggregated gender-related data and information in order to form basis for developing gender-sensitive policies, plans and programmes.

Article 5: Measures for modification of social and cultural patterns of conduct

60. **The context of FGM practice in Kenya**: The Kenya Demographic and Health Survey (KDHS) 2008/2009 indicates that 27.1 per cent of women surveyed are circumcised, a decline from 32 per cent in 2003. The KDHS also indicates that a higher proportion of rural women (30.6 per cent) than urban women (16.5 per cent) have been circumcised and further indicates a marked decline in prevalence between generations.

61. **The Prohibition of Female Genital Mutilation Act** (2011) provides that the Government should take positive measures in order to ensure the provisions of the Act are actualized. The Government established the Anti-FGM Board in 2013 to coordinate the implementation of the Prohibition of the Female Genital Act, 2011.

62. **Actions to prevent cultural patterns fuelling sexual and gender-based violence: Policy frameworks**: The Government has put in place various policy measures to guide interventions around violence against women in Kenya. These are prioritized in Kenya Vision 2030 and its first Medium Term Plan 2008-2012. The Vision further expresses the Government's commitment to undertake deliberate efforts to "prohibit retrogressive cultural practices and social ills as well as improve access to essential services".

63. **National Framework on Prevention and Response to Gender Based Violence**: The Government has developed a National Policy on Prevention and Response to Gender Based Violence. Launched by His Excellency the President of the Republic of Kenya as a demonstration of his commitment to lead from the front to end all forms of violence, the Policy provides a framework towards the Elimination of Gender Based Violence in the Country. It lays out key objectives which seek to ensure a coordinated approaching and effective programming, enhancement of laws and policies towards GBV prevention and response.

64. **Programmes being undertaken, raising awareness, community mobilization, public and private sector initiatives**:

- The Government of Kenya through the leadership and coordination of the National Gender Machinery in partnership with other actors is undertaking various programmes to address GBV in the work place and in the public sector:
- Mapping of sexual and gender based violence services in order to raise high national level awareness of gender based violence services offered and available in the country.
- Engaging various informal justice systems in Kenya including Council of Elders, in different regions. These programmes are important as informal justice systems to the women at the grass-roots level.
- Advocacy initiatives on harmful cultural practices by conducting civic engagement to sensitize communities on the implications of FGM, disseminating information on the Prohibition of FGM Act, 2011.

65. **Protection against Domestic Violence Bill (2013)**. This Bill has already undergone second reading in parliament and if enacted into law, the Protection against Domestic Violence as legislation will protect families from domestic violence. The legislation seeks to protect victims of domestic violence and provide protection for spouses and any children or dependants within the family unit. The Bill recognizes sexual violence within marriage, child marriage, FGM, incest, defilement, forced wife inheritance, interference from in-laws and sexual abuse as forms of domestic violence unlike previously when they were only associated with physical violence.

66. The National Policy framework and guidelines for the administration of sexual violence have been completed awaiting the Attorney General approval and publication. As part of developing more coordination in responding to sexual violence, National Guidelines on Rape and Sexual Violence Management have been developed through a joint initiative with the Ministry of Health, Division of Reproductive Health (DRH).

67. The Government has set up a multisectoral Standard Operating Procedures (SOPs) setting out the roles and responsibilities of each stakeholder in the prevention and response to sexual and gender-based violence:

- The Directorate of Gender is charged with the overall responsibility of promoting and coordinating gender equality initiatives including SGBV. The Directorate has established a multisectoral GBV committee to provide guidance on GBV prevention and response programming in the country.
- National Gender and Equality Commission as the oversight body monitoring governments work on the protection and promotion of the rights of women, children, youth, elderly, the minority and persons with disabilities.
- Gender Units in Government Ministries and State Cooperation's to spearhead gender mainstreaming including integration of SGBV initiatives in their sectors.
- National Council on the Administration of Justice to receive and investigate public complaints including sexual violations.
- Kenya Commission on Human Rights to address human rights violations including women's and children's rights.

68. **Provision of legal aid to GBV survivors**: Various organizations are providing free legal services to GBV victims/survivors including training on self-representation to allow GBV survivors to represent themselves in court. Under the Children's Act, 2001 and FGM Act 2011, gender and children officers provide paralegal and counselling services. The Government through the Ministry of Health offers free medical services to survivors of SGBV. Towards strengthening and reorienting health personnel on gender sensitivity for survivors of violence, the Ministry of Health has undertaken a series of capacity building interventions.

69. **National Cohesion and Integration Act**: This Act prohibits ethnic discrimination in employment; in the membership of organizations; the access to and distribution of public resources; in property ownership, management and disposal.

70. **Non-discriminatory Land and Property Ownership**: the Constitution of Kenya, 2010 Article 60 1(f) provisions for elimination of gender discrimination in law, customs and practices related to land and property in land meaning that women can now inherit land. To actualize the realization of this provision, National Land Commission Act recognizes the constitution of County land Boards that are gender-aware in their structure and/or composition. This is important because the land boards form part of the structures by which land inheritance matters are adjudicated hence women have an opportunity to sit in land adjudication bodies and voice their concern in the distribution, disposal and ownership issues. These had originally been the preserve of males where land inheritance was through androgenic rules in the society.

71. **Matrimonial Property Act 2014**: provides for equal status of spouses (Section 4) where a married woman has the same rights as a married man: to acquire, administer, hold, control, use and dispose of property whether movable or immovable; to enter into a contract; and to sue and be sued in her own name.

72. **Repeal of Section 38 of the Sexual Offences Act** which provided for unreasonable punishment for people making false reports relating to sexual offences. This provision served as an obstacle to reporting cases of sexual offences. Moreover, the Government has appointed special prosecutors for cases of sexual violence.

73. **Rules for magistrates and judges on sexual offences**: Committee of the Judiciary developed rules and procedures to guide judges and magistrates in implementing the protective provisions of the Act. The Judiciary Training Institute has collaborated with various NGOs to conduct trainings for judges and magistrates on the SOA, violence against women and human rights. This is complimented by the development of National Guidelines for the Management of the Sexual Violence by the Government and relevant stakeholders.

74. The Government has established Gender Based Violence Recovery centres in the largest public hospitals in Kenyatta National Hospital, Mombasa, Nakuru, Kisumu and Eldoret. This will help to address the plight of women survivors of SGBV who more often are not able to access services.

75. The Government now provides Post Exposure Prophylaxis and Emergency contraception to victims of sexual violence who report to health facilities. Besides, the Government is undertaking a review to Gender Desks in police stations to determine interventions required to strengthen management of GBV cases.

76. **Housing Situations for women in the informal settlements**: In 2012 the Government initiated the process of developing the National Slum Upgrading and Prevention Policy (NSUPP). This was as result of a multi stakeholder process held under the auspices of the Multi-Stakeholder Support Group Forum (MSSG). The need for NSUPP had initially been agreed upon during the MSSG held in November 2011. The NSUPP is being undertaken within a number of policy and legal frameworks. These include the National Housing Policy 2004, the National Land Policy 2009, the Constitution of Kenya 2010, the Draft National Urban Development Policy (NUDP) and Kenyan Vision 2030. The Constitution of Kenya 2010 under Article 43 guarantees the right to accessible and adequate housing. Article 21 requires the Government to take appropriate policy and legislative measures including the setting of standards to ensure that the right is achieved. By developing the NSUPP the Government is discharging its mandated constitutional obligation.

77. The National Land Policy Sessional No. 3 of 2009 is also quite explicit on the need for a slum upgrading Policy.

78. **Truth Justice and Reconciliation Commission Report 2013**: The report focuses on the following areas: gender based persecution looking at issues of widow rights, matrimonial property rights and widow inheritance, sexual violence, the preference for the boy child, early marriage and female genital mutilation (FGM). It also looks into the issues of socioeconomic status of women including issues of the feminization of poverty, women employment, women and land rights, education, maternal mortality and access to health facilities and women with HIV/Aids as well as challenges women face in being involved in politics.

79. **Media and Sexual objectification**: The media in Kenya is diverse and largely free following the liberalization of the airwaves and entry into the market of private and vernacular radio stations. According to the Media Council Annual Status Report 2012, there are 301 radio stations categorized as being "on air", 6 daily newspapers, 11 weekly newspapers and 20 monthly magazines. Kenya has more than 15 television stations available in major towns across Kenya. The Kenya Broadcasting Corporation is the only Government owned broadcasting station.

80. The Government has taken deliberate measures to ensure that women are portrayed positively in Kenya by passing the Media Council Act (2013) which contains a Code of Conduct for journalists that calls for objectivity and fairness in portrayal of women and children. Increasingly the electronic media has improved its coverage of children by respecting their privacy. The Government efforts have been complemented by women media organizations which conduct trainings and provide scholarships for women journalists to enable them compete for jobs on an equal footing with men.

81. In 2013, the Government adopted the free maternal health-care policy in government health-care facilities.

82. **Challenge on Prohibition of FGM law**: The implementation of this Act has been met with challenges where the practice of FGM is prevalent. In some parts of the country, communities have protested against the implementation of this Act. These communities have argued that the provisions of the Act infringes against their Constitutional right to culture. The Government recognizes that criminalization of FGM needs to be accompanied with the relevant public education and sensitization programmes, to avoid the practice of FGM being carried out in secrecy, and in a manner that would not easily be detected.

83. **Challenge National Cohesion and Integration Act**: The National Cohesion and Integration Act do not take into account a crucial aspect of the CIPEV report, and focuses only on ethnic discrimination within the public sphere.

84. **Challenges**: The free maternal health-care policy so far only caters for delivery. It does extend to antenatal or postnatal care.

85. **Other challenges** are illiteracy and poverty which hinder access to justice and make women vulnerable to SGBV. This leads to lack of information and access to institutions and bodies that would assist women to access justice. This also leads to lack of information on legislation available to seek redress for survivors of GBV.

86. **Challenge**: The Government recognizes there is still need for better coordination and learning between development agencies aimed at providing better

training for civil society organizations, legal aid agencies, security forces and election workers regarding the protection and services for politically active women candidates and voters.

87. **Challenge**: Weak medico-legal linkages: medical (such as care and treatment) and legal (such as a survivor's access to justice) responses to GBV in order to guarantee survivor safety, effective prosecution of cases and uphold perpetrator rights to a fair trial. Kenya currently lacks a harmonized chain of custody of evidence across the medical, police and legal levels that ensures the plausibility of cases in court.

Article 6: Action to suppress all forms of trafficking in women and exploitation of prostitution of women

88. Kenya has been noted as a source, transit, and destination country for trafficking of men, women, and children. Trafficked Kenyan adults are exploited in involuntary domestic servitude and forced prostitution. Kenyan men, women, and children migrate to the Middle East, other East African nations, and Europe under different circumstances in search of employment, where they are exploited in domestic servitude, massage parlours and brothels, and forced manual labour, including in the construction industry (USDS, 2010).

89. **Legislation**: Enactment of Counter-Trafficking in Persons Act 2010. The constitution of Kenya also guarantees fundamental rights and freedoms for all, men and women alike as provided for in Article 27(3) and Article 53(d).

90. **National Steering Committee on Counter Trafficking in Persons**: The Government established the National Steering Committee on Counter Trafficking in Persons in 2012 to monitor the implementation of the Act. A National Plan of Action (NPA) has been developed as a measure to respond to the situation.

91. **Cases of women being offered jobs abroad** and instead ending up as slaves (including sexual slaves) have been in the increase in Kenya. The countries into which women are mostly trafficked to the Middle East. Women are often lured into these countries with the promises of well-paying jobs and a better quality of life. However, they are often subjected to difficult working conditions (often, not the types of jobs that they were promised), lack of freedom (their passports and other identification documents are often confiscated); lack of adequate pay for the work that they are expected to do. As a result of these problems, the Kenyan Government, in June 2012, banned Kenyans from travelling to the Middle East region, if the purpose of the travel was to take up work as domestic workers.

92. **Prosecutions**: In September 2009, a Nairobi court sentenced two Kenyan women to 10 years' imprisonment for subjecting children to prostitution. In 2009, authorities at Jomo Kenyatta International Airport detained an American citizen on suspicion of trafficking Asian women to Eastern Europe via Nairobi and government officials worked closely with United States law enforcement to arrest and extradite him to Thailand.

93. **Challenge**: The trafficking of women often happens through employment bureaus operating in Kenya which scout for women and offer them employment abroad. Most Kenyan migrants are employed as domestic workers and are vulnerable to abuse, exploitation, violence, rape and even murder. In response to the alarming number of cases involving the mistreatment of Kenyans abroad, on

29 September 2014 the Government revoked the licenses of 930 agencies recruiting Kenyans to work in the Middle East.

Article 7: Measures to eliminate discrimination against women in and ensure equality in political and public life

94. **Context of women's underrepresentation**: In Kenya, a number of factors block women's level of participation in politics as pointed out in Women's Manifesto (2010): Men dominate the political stage and set the rules of the political game and women lack confidence in vying for political leadership; Political life is organized according to male norms and values which set the standards through which political achievement is judged. These often emphasize aggression and long hours spent outside the family set-up; short changing of women during political party nominations; the nature of the electoral system and environment, which may not be favourable to women candidates. Similarly, issues such as inability to utilize women's voting power and numerical strength; ignorance and illiteracy coupled with limited financial muscle among women candidates have largely contributed to the underrepresentation.

95. **Constitution and Legislative development**: There has been remarkable positive constitutional development. The Constitution of Kenya 2010 is explicit in its provision that "not more than two-thirds of the members of elective public bodies shall be of the same gender" and elevates women's representation in the National Assembly and County Assemblies. Articles 27(3), (4), (6) and (8) as read together with Article 81(b), 96, 97, 98, 177(1)(b), 116 and Article 125 provide inter alia that not more than two thirds of the membership of any elective or appointive bodies shall be of the same gender.

96. The Political Parties Act 2011 was legislated after the passing of the Constitution of Kenya 2010. It provides a legal framework for participation of men and women in formation and management of political parties and in participation in all voting conducted at party levels regardless of sex. It also provides that every political party shall among other requirements "respect and promote human rights and fundamental freedoms, and gender equality and equity". It is noteworthy that although political parties are required to respect and promote gender equality and equity, there is no penalty for noncompliance with this provision of the law. Political parties have generally failed to ensure women's equal participation. This was particularly evident in the March 2013 General Elections.

97. Although the Elections Act 2011 went through several amendments just before the March 2013 elections, none of the amendments sought to deal with the potential crisis of failing to meet the Constitutional gender threshold.

98. **At the Senate level**: The Senate is composed of 47 members elected from single-mandate constituencies (Counties); 16 seats are allocated to women members, nominated by political parties according to the proportion of seats won in the Senate elections; 2 seats to members representing the young (one woman and one man); and 2 seats to members representing persons with disabilities (one woman and one man). Except in the case of the seats reserved for women, each party list representing special interests (youth, persons with disabilities and workers) comprises the appropriate number of qualified candidates and alternates between male and female candidates in

the priority in which they are listed. (Article 90(2:b) of the 2010 Constitution and Article 36(2) of the Elections Act 2011).

99. **At the National Assembly:** Article 27(8) of the 2010 Constitution states that the 'State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.' Furthermore, Article 81(b) stipulates that the electoral system shall comply with the principle that 'not more than two thirds of the members of elective public bodies shall be of the same gender', however.

100. In addition, the Constitution (2010) reserves 47 seats in the National Assembly for women deputies elected from 47 counties, with each county constituting a single-mandate constituency. These seats are contested only by women candidates nominated by political parties in these counties. The law further provides that, the National Assembly has 290 elected members, each elected by voters of single-mandate constituencies, and 12 members nominated by political parties to represent special interests including the youth, persons with disabilities and workers, with the relevant list to be composed of alternating male and female candidates (Article 97 of the Constitution of Kenya, adopted August 2010). Except in the case of the seats reserved for women, each party list representing special interests (youth, persons with disabilities and workers) comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed. (Article 90(2:b) of the 2010 Constitution and Article 36(2) of the Elections Act 2011).

101. **At the county level**, reserved seats are used as the quota system. The Constitution (2010) provides that no more than two-thirds of the membership of the county assembly is of the same gender. In order to ensure this, every county assembly shall consist of members elected by voters in each ward (each ward constituting a single member constituency) and a number of 'special seat members'. The holders of these special seats should be nominated by political parties in proportion with seats received in that county by each political party. (Articles 175 (c), 177(1b) and 197(1). Each party list representing special interests (youth, persons with disabilities and workers) comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed (Article 90(2:b) of the 2010 Constitution and Article 36(2) of the Elections Act 2011).

102. Although the Constitution was passed in August 2010, at the end of 2012, just before the elections of March 2013, the Attorney General filed a constitutional Reference in which he sought the Supreme Court's advisory opinion on whether the "not more than two-third gender principle" was applicable to the National Assembly and the Senate in the March 4th general elections.

103. The Supreme Court ruled that it would be impractical to implement the Constitutional principle of "not more than two-thirds gender proportions rule as stipulated in the constitution under Article 81(b) as Parliament and various political entities had not prepared themselves adequately. As a result of the Affirmative Action seats, political representation of Kenyan women now stands at 25 per cent. This is an improvement from the previous 9.8 per cent representation in the 10th Parliament.

104. **Leadership in the National Assembly**: Women presently chair seven out of the 27 committees in the National Assembly while also serving as vice-chairpersons in eight other committees but remain slightly represented in other House positions.

On average, women currently comprise 20 per cent of the membership of all National Assembly committees in the 11th Parliament. For the first time in Kenyan history, the Deputy Speaker is a woman.

105. **Leadership in the Senate**: Women's leadership in Senate committees is greater than in the National Assembly. One of the 11 committees is chaired by a woman, while women serve as vice-chairpersons on six other committees. Overall, women currently comprise 28 per cent of the membership in all the Senate committees.

106. As a bicameral body, the national parliament now has joint committees that draw membership from the National Assembly and Senate. So far, there are two joint committees: the Joint Committee on National Cohesion and Equal Opportunity, and the Joint Parliamentary Broad-casting and Library Committee.

107. **Progress in women's participation at the Cabinet**: There has been marked progress in the representation of women in key Cabinet positions — The number of women Cabinet Secretaries in Kenya's Cabinet has increased. Women Cabinet Secretaries and Principal Secretaries constitute 33.3 per cent and 26.9 per cent respectively. Women hold key dockets in Government in positions of Cabinet Secretaries for; Devolution and Planning, Defence, Lands, housing and Urban Development, Water, Environment and Natural Resources, Foreign Affairs and International Trade, East African Community as well as Trade and Tourism. The portfolios to which women have been appointed are fundamental in guiding the economic and security direction of the nation and the nation's relations with external partners.

108. **Progress In women's participation at the Judiciary**: The Deputy Chief Justice and the Chief Registrar of the Judiciary are women. The number of women magistrates increased from 174 in 2012 to 218 out of a total of 486 in 2014. The number of women judges increased from 44 in 2012 to 48 out of a total of 126 Judges in 2014. This means that the gender threshold has been met in the highest levels of the judiciary.

109. **Progress in women's participation in Constitutional National Commissions**: Women are at the helm of 4 of the key National Commissions — The chairpersons of Kenya National Commission on Human Rights, the Chairperson of the National Gender and Equality Commission, the Chairperson of the Salaries and Remuneration Commission, Public Service Commission and the Budget Controller. Women also occupy the positions of the Vice Chairpersons of the Commission on the Implementation of the Constitution and the National Land Commission and the Commission on Administrative of Justice. Women form not less than one third of the members of the entire constitutional and Statutory Commissions.

110. **Progress in nomination and election of women to political offices**: The period witnessed increased election and nomination of women to political offices, on average women hold only 38 per cent of national political party positions.

111. **Progress in women's participation as County Commissioners**: Women County Commissioners constitute 36.2 per cent of the total County Commissioners appointed by the President. These figures indicate that there has been a marked increase in the appointment of women to decision-making positions in Kenya's Government and that the official goal of a minimum of 33 per cent representation of women is progressively being attained in many key positions.

112. Challenges; **Patriarchal dividend and elective politics**: According to the Global Gender Gap Report (2013), women make up some 54 per cent of the voting population in Kenya, which certainly should provide a platform from which more women can reach elected positions without the need of an *Affirmative Action* in order to be at par with their male counterparts. However, women accounted for only 46 per cent of voters who actually turned out in the 2013 election. Kenyan women continue to fair dismally in the male dominated political arena. Similarly, in the March 4th, 2013 general elections, none of the 47 counties voted in at least 10 women where up to 18 counties did not elect any women. This is a clear indicator of deep-seated patriarchal political attitude towards public leadership among a majority of electorates despite the remedial measures being in place. Sociocultural aware civic education aimed at dismantling the image of 'male-politics' should become a responsibility of the men and women whether elected or not in partnership with the civil society organizations. The timings of such education need to be on a rolling basis in order to influence the attitude towards norming women's 'electability' in the society.

113. **Lack of voting rights for nominated senators and threat to affirmative action**: Article 123(4) of the Constitution states that each county shall have one vote to be cast on behalf of the county by the head of the county delegation who in this case is the elected senator (all which are males in the current parliament). The same principle has been replicated in Article 68 of the standing order which equally assigns each county one vote; hence, the voting power is vested in the elected representative. While the intention is to give counties equal voting rights, it serves to weaken the affirmative clause that informed the nomination to the senate.

114. **Another challenge** is lack of well-structured mentorship by women political leaders. Whereas, the Kenya Women Parliamentary Association has been active since 2001, lack of substantive funding has under-cut its ability to deliver its mandates on timely basis.

115. **Another challenge is that** women remain underrepresented in the Joint Committee on National Cohesion and Equal Opportunity committee which is expected to perform tasks integral to the promotion of equal opportunity for women in Kenya and to oversee the elimination of gender discrimination in government bodies.

Article 8: Women's representation of the Government at international level

116. Kenya's Constitution, stipulates that not more than two-thirds of any appointed or elected body may be of the same gender as a strategy to achieve gender balance. The economic survey 2014 shows that that Kenya has 15 women envoys or 23.8 per cent of the country's diplomatic corps.

117. **Challenge**: There continues to be underrepresentation of women in the Diplomatic corps positions despite the constitutional provision demanding for equitable representation of men and women in appointive positions.

Article 9: Women's rights to nationality

118. The constitution (2010) on its chapter on citizenship clearly defines the concept of acquisition and loss of citizenship for Kenyan men and women. More profoundly, it speaks to the fact that citizenship is no lost through marriage or the dissolution of marriage. The law also grants dual citizenship and women are allowed to confer citizenship to their spouses.

119. **Kenya Citizenship and Immigration Act, No. 12 of 2011**: The Kenya Citizenship and Immigration Act which implements Chapter 3 of the New Constitution commenced on 30th August 2011, effectively repealing the Kenya Citizenship Act Cap. 170, the Immigration Act Cap. 172 and the Aliens Restriction Act Cap. 173 Laws of Kenya. This Act makes provision for the acquisition, loss and regaining of citizenship, duties and rights of citizens; issuance of travel documents; entry, and residence and exit out of Kenya. Some of the main concerns addressed in the Constitution is enabling Kenyan women to pass citizenship to foster children.

120. **Challenge**: Article 14 of the Constitution of Kenya provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of that person is a citizen. The Constitution does not distinguish between the parent(s) being a citizen by birth or registration. However, the Act is more restrictive and provides that a person born outside Kenya shall be a citizen by birth if on the date of birth that person's mother or father was or is a citizen by birth (not a citizen by registration). This provision may be subject to challenge in the future as the Constitution prevails over the Act.

121. **Way forward**: The issue of women married under customary law without any certificates as proof of such marriages when applying for passports has been resolved under the Marriage Act (2014) requiring that customary marriages be officially registered after three months. The immigration office will undertake to publicize citizenship Law on the same to ensure wider understanding of the same among the general public.

Article 10: Equality in the field of education

122. **Legislative development**: The right to education without discrimination is enshrined in the Constitution of Kenya 2010. Education is entrenched as a Fundamental Human Rights issue in the laws of Kenya (Article 10(2) (b), 28, 43(1)(f)) with access to Basic Education clearly spelt in articles 53 1(b) (d), 54(1)(b). In addition, Kenya's Education Act 2013, further articulates the right to education for all Kenyans and sets a broad framework for the attainment of the right to education.

123. **Education policy and 2015 goal**: The policy aims at providing every Kenyan, without any discrimination, with basic quality education and training which includes 2 years of pre-primary, 8 years of primary and 4 years of secondary/ technical education. The policy also seeks to ensure that education and training embrace equity issues, such as equal opportunity for all in access, retention, transition and completion and to eliminate gender and regional disparities at all levels of education by 2015.

124. **Affirmative Action in Education**: In order to meet policy objectives, especially those related to equity and equality in education, the Government supports affirmative action in provision of education at all levels. This comprises: providing support to poor and disadvantaged students through secondary school bursaries, providing support to targeted boarding schools in arid and semi-arid areas and other deserving areas, especially for girls, ensuring the re-entry of girls who drop out of school due to pregnancy and early/forced marriages as well as sensitizing stakeholders and communities to discard sociocultural practices that prohibit effective participation of girls and boys in secondary school education and enforce legislation against the violation of children's rights.

125. **Sanitary Towel fund initiative**: The National Schools Sanitary Towel Programme is guided by the provisions of the Constitution — Article 53(1) (b) Article 28, and article 43(1) (a), 152. The Ministry of Education Science and Technology (MoEST) adopted the Schools Sanitary Towel Programme in the year 2011, a programme previously spearheaded by civil society. The Government has set aside funds to provide sanitary towels for girls in poor and marginalized areas as the lack of sanitary towels among poor girl was identified as one of the obstacles to girl child. The programme is in its 4th year of implementation with a budgetary allocation of Kshs 400 million shillings in current FY 2014/2015.

126. **Government efforts to encourage girls' uptake of Information, communication and Technology subjects**: This is done by equipping schools with computers, capacity building of Science, Mathematics and Technology (STEM) teachers in subject content knowledge and use of gender-responsive pedagogy; sensitizing girls and boys, parents, communities, teachers, PTAs, SMCs, BOGs and educational managers, so as to change beliefs and attitudes about females' ability in Science, Mathematics and Technology (STEM).

127. The Government is engendering the curriculum and increasing access to gender-responsive Science Mathematics and Technology (STEM) facilities, equipment and text books, especially for girls; implementing affirmative action for qualified females in admissions to Science, Mathematics and Technology (SMT), Technical, Industrial, Vocational and Entrepreneurship Training (TIVET) and university programmes by instituting gender-responsive, subsidized bridging courses/pre-tertiary SMT programmes to enable girls and women meet admission requirements and provide scholarships and bursaries for needy students, particularly girls pursuing SMT-based programmes; building girls' confidence in Science, Mathematics and Technology (STEM) through implementation of programmes, such as mentorship, role modelling, science camps/clinics and career guidance; mobilizing resources for STEM programmes and research with special focus on women and girls issues in STEM; and lobbying for increased recognition and reward of women scientists and technologists by society and the labour market; institutionalizing gender-responsive monitoring, evaluation and accountability mechanisms for STEM programmes improvement, progress and impact assessment.

128. **Sustained allocation of resources to the education sector**: The Government has sustained allocation of resources to the education sector, to ensure that education and training embrace equity issues, such as equal opportunity for all in access, retention, transition and completion, and to eliminate gender and regional disparities at all levels of education by 2015. In the 2014 budget, the Education

Ministry has been allocated 27.3 per cent of the National Budget which is the largest sector budget.

129. **Primary school Gross Enrolment Rate (GER) and Net Enrolment Rate (NER)**, 2009-2013 grew steadily. For example in the Kenya Certificate of Primary Education (KCPE) examinations, the number of candidates grew by 3.4 per cent from 811,930 in 2012 to 839,759 in 2013. The number of female candidates rose by 4.3 per cent from 396,310 in 2012 to 413,390 in 2013 compared to an increase of 2.6 per cent for the male candidates. This shows that as a result of implementation of Education Act and Education policy, the education sector in Kenya has seen an increase in the rate of transition of girls from primary schools to secondary school.

130. **Primary Teachers**: There was an increase of 4.9 per cent in the total number of teachers in public primary schools from 191,034 in 2012 to 199,686 in 2013. The increase can be attributed to recruitment of teachers in the year 2012/2013. The upgrading of teachers who had completed degree and diploma courses resulted in a significant increase in the number of graduate teachers from 6,865 in 2012 to 19,273 in 2013 with the number of female graduate teachers overtaking their male graduate teachers. Similarly, the number of secondary school teachers for the period 2009 to 2013 also increased. The total number of public secondary school teachers increased by 1.8 per cent from 64,338 in 2012 to 65,494 in 2013. This was mainly due to the replacement of teachers who had exited. Female graduate teachers increased by 3.3 per cent from 19,731 in 2012 to 20,378 in 2013 compared to an increase of 1.0 per cent for the number of male graduate teachers. The number of trained secondary school teachers increased by 1.9 per cent while that of untrained secondary school teachers declined by 31.4 per cent from 229 in 2012 to 157 in 2013.

131. **Progress in access to high schools**: More girls are now able to access higher education. Secondary school Gross Enrolment Rate (GER) has been on an upward trend since 2009. The GER increased from 49.3 per cent in 2012 to 56.2 per cent in 2013 and the Net Enrolment Rate (NER) for secondary schools increased by 6.4 percentage units to stand at 39.5 per cent in 2013. Expansion of NER in secondary schools may be attributed to the Free Day Secondary Education (FDSE) in addition to increase in the number of schools as well as to efforts to remove obstacles, such as early and unwanted pregnancies and return to school programmes for girls who conceive while in school.

132. **Government Directive** on issuing completion certificates to girls and boys, whether they have fees arrears or not, aims to enable transition to higher levels of education. Many girls from poor backgrounds are set to benefit from this executive directive and proceed to secondary school and other technical institutions having obtained necessary documents. This initiative complements Government's effort in the affirmative action of entry of girls to higher institutions.

133. **Progress in Completion of Secondary School by girls**: Increase has been attained in the number of girls enrolled in secondary school and in their secondary school completion rate. In the Kenya Certificate of Secondary Education (KCSE) for example, the number of KCSE candidates increased by 3.0 per cent from 432,443 in 2012 to 445,520 in 2013. The number of female candidates grew by 4.6 per cent to 202,539 in 2013 compared to an increase of 1.7 per cent for the number of male candidates. However, the total number of girls is still lower. In addition; there are still a considerable number of girls who drop out, which means that obstacles to girls' education have not been totally eliminated.

134. **University Education**: The overall university student enrolment increased by 34.9 per cent from 240,551 in 2012/13 to 324,560 in 2013/14. The increase is attributable to higher enrolment levels in the public universities following the introduction of new courses in addition to upgrading of university colleges. Women student enrolment rose by 25.0 per cent to 131,375 in 2013/14 while male student enrolment increased by 42.6 per cent from 135,436 in 2012/13 to 193,185 in 2013/14. During the same period, enrolment at public universities increased by 41.3 per cent from 195,528 in 2012/13 to 276,349 in 2013/14. Enrolment in private universities increased by 7.1 per cent from 45,023 in 2012/13 to 48,211 in 2013/14. The number of women enrolled in public and private universities has shown slight increases but parity in university education between men and women is yet to be attained at all levels in Kenya.

135. **Establishment of women study centres**: The Government in partnership with non-state actors has supported the establishment of women centres in the leading public universities. This exemplified by the African Women's Studies Centre, University of Nairobi which exists to promote scholarship and influence policy from African women's perspectives through research, teaching, publication and dissemination and engaging with policymakers.

136. **Development of an Education Sector Support Programme**, 2010-2015 after successfully implementing the 2005-2010 programmes. The government has developed an education sector support programme to provide a comprehensive framework for implementation of programmes and activities in order to meet Education Policy goals and objectives. Some of the measures in the Education Policy that have led to success in the education sector include among others:

(i) School instructional materials have been engendered to remove stereotypes that depict women as only capable of taking up careers like nursing while men take up engineering and medical courses.

(ii) Provision of free education capitation grants to non-formal education schools. Due to demand for education after the introduction of FPE, many schools owed privately emerged in the informal settlements and absorbed children who would otherwise have missed education.

(iii) School health, nutrition and feeding programmes. This has served as an incentive for children from very poor families to attend school.

(iv) Provision of Constituency Bursaries to the needy has enabled a smooth transition to secondary school and tertiary institutions for children from poor families.

(v) Provision of grants for laboratory equipment. More girls are now able to learn Science and technical subjects as all schools can now be able to equip their laboratories. Previously most girls schools did not have well-equipped laboratories.

137. **Non-tolerance of learners' abuse: The Teachers Service Act 2013**: TSC Circular No. 3 of 2010 and Database on Disciplinary Measures including offences against a learner. Revisions of the code of ethics for Teachers — supposed to give interpretations on sections of protection of female learners. Moreover, the Ministry of Education Science and Technology (MoEST) is considering development of a Learners Protection Policy to prevent circumstances where girls are impregnated by

their teachers. Review of Children's Act (2001) to strengthen protection mechanisms including protection of girls from all forms of violence including sexual harassment at school. These efforts are complimented by the ongoing development of the National Child Protection Policy Framework and the enacted Prohibition of Female Genital Mutilation Act (2011), all of which protect school-going girls from harmful practice and allow the young girls to enjoy their education entitlements.

138. **Challenges and way forward**: There are increasing numbers of women joining the teaching profession at the primary school level. However, there are a lower numbers of women joining secondary school teacher colleges and universities. The Government will apply affirmative action on admission of female students in tertiary colleges to shore up the numbers and bring parity at the high levels of education and training.

139. There is a shortfall as the total number of girls in need of sanitary towels is approximately 2.2 million girls both in primary and secondary school. The budget needed for this total reach is Kshs. 2.4 billion per year. This is an average of 70% girls who are still in need of accessing sanitary towels; a critical gap that needs to be addressed by partners and stakeholders working in the development sector. The current budget allocated by Treasury is Kshs400 million which is targeting to reach 650,000 adolescent girls. The Government has been engaging partnership with Private sector and civil society to reach the 1.8 million girls, who are yet to be reached by the programme.

140. **Other challenges** cut across withdrawing girls from school to help with care giving work, farm work, or for early marriages. While the Government has responded through stringent legislation, continual community awareness will be carried by the National and County Governments in partnership with civil societies on the significance of educating girls.

Article 11: Elimination of discrimination against women in the field of employment

141. Currently, women in Kenya do the vast majority of agricultural work and produce/market the majority of food. Only 29 per cent of those earning a formal wage throughout the country are women, leaving a huge percentage of women to work in the informal sector without any federal support. Nearly 40 per cent of households are run solely by women and, because of a lack of fair income, nearly all these homes suffer from poverty or extreme poverty (FSD, 2014).

142. **Legislation**: The Kenya law clearly states that there shall be no form of discrimination in employment. Both the Employment Act, section 5(3) and the Constitution of Kenya, Articles 26-51, bar any form of discrimination on the grounds of gender, (among others) in accessing employment and in employment security. In addition, Section 5 gives responsibility to the Minister, labour officers and the Industrial Court to ensure that employers promote equality of opportunity in employment in order to eliminate discrimination in employment.

143. **The labour Relations** are protected in Article 41 of the Constitution as follows: These provisions are safeguarded in Article 236 stating that a public officer shall not be victimized or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or dismissed,

removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.

144. **Sexual Harassment**: Sexual harassment at workplace is prohibited by law and an employer is supposed to create a policy statement prohibiting sexual harassment at workplace. However, law does not propose any punishment (section 6 of the Employment Act). However, under section 28 of the Sexual Offences Act of 2006, "Any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both".

145. **Equal Pay**: All workers are meant to be treated equally as the law instructs, which means men and women should get the same pay if they do work of equal value.

146. **Maternity Leave**: Female employees can get 91 days (3 months) of maternity with full pay. This period can be extended if the employer gives consent (Section 29 of the Employment Act, 2007). The maternity leave is awarded with full pay and is financed by the employer (Section 29 of the Employment Act, 2007). Similarly, a female worker has the right to return to same job/position (or some other similar and suitable position) after availing her maternity leave (Section 29.2 of the Employment Act, 2007).

147. **Expansion of ICT services** — Fiber Optic Cables and increased use of social media leading to increased connectivity and access to information. This means that women can take advantage of the information available on the internet to start or expand their businesses. This is particularly useful for young unemployed graduates who have been able to tap into the wealth of information on the internet and link up with international markets. Internet connectivity is now available in all major counties at affordable rates.

148. **The Micro and Small Enterprises Authority** — coordinates small and medium enterprises which are largely dominated by women. Government is creating a more conducive policy environment for MSE development, primarily through the facilitation of labour law reform, and in addition there have been attempts to stimulate specific sector reform to promote a decent work agenda in the MSE sector. The National Micro and Small Enterprises (MSE) Bill (2011) takes cognizance of the fact that MSEs are the drivers of Kenya's economy and it aims at an organized, regulated and well-coordinated MSE sector in Kenya for improved productivity and growth.

149. **Status of Child Labour**: The Ministry of Education estimates that there are over 1 million children out of school. The KNBS Child Labour Analytical Report (2008) estimates that 1.01 million children are economically active; 773, 696 (365,537 girls and 408,159 boys) are in child labour. Child labour has been found to be a result of a multiplicity of causes in Kenya. Poor economic performance and lack of social security has contributed to the increasing number of households affected by poverty. The adoption of child rights business principles within the private sector bodies such as association of Federation of Kenyan Employers which include development of protection of children from labour within the production chain is a significant effort towards salvaging young girls who have always been recruited as cheap source of labour at the expense of their Human Rights entitlement. Moreover,

review of Children Act (Amendment Bill) and Social Protection Act — offer protection mechanisms for children and employees.

150. **Challenge and way forward**: The scarcity of data, which makes it difficult to characterize the conditions under which workers are engaged and the fact that the majority of workers in Kenya are transitory, operating mainly in the informal economy pose to be some of the challenges faced. In addition, awareness on OSH is low thus exposing a huge number of workers to work place risks. If an employee is pregnant, there is no provision in the law which would restrict her employer in assigning her arduous or harmful work. Similarly, the law doesn't cover nursing breaks for new mothers.

151. **Unpaid and unrecognized work of women:** Women constitute majority of the labour force in family and commercial farms in Kenya. For example, women continue to mitigate and respond to disease challenges at the community level by providing community and home-based care. However these contributions have continued to go unrecognized due to the manner in which GDP is calculated.

Article 12: Measures to eliminate discrimination of women in the field of health

152. In Kenya, the Maternal Mortality Rate (MMR) is high, with 488 deaths per every 100,000 live births per year, largely because women do not give birth under the care of skilled health providers. These high rates of maternal deaths are attributed to well-known and preventable causes (KDHS, 2009). The majority of women (56 per cent) give birth at home due to: lack of transport, fears about negative attitudes of health workers, long distances to health facilities and cultural preferences.

153. **Free maternal health-care provision**: The framework for free maternal health services is provided for under several local, regional, and international mandates. These are laid out in Article 43(1) (a) of the Constitution of Kenya 2010, (Article 43(2)), (Article 28) and (Article 35). The Kenya National Patients' Rights Charter (2013) outlines the right to access health care, the right to receive emergency treatment in any health facility irrespective of ability to pay, the right to the highest attainable quality of health-care products and services, the right to be treated with respect and dignity, the right to information, and the right to complain, among others.

154. **Government policies on fees**: Overall, about 3 to 4 per cent of Kenyans are pushed into poverty each year due to illness-related expenses. As of June 2013, the Government introduced free maternal care in all public health facilities encourage more women to deliver at health facilities and to result in fewer maternal deaths. With the new policy, health facilities will be reimbursed by the Government for every delivery that they handle, at the rate of Sh. 2,500 per birth at health centres and dispensaries, and Sh. 5,000 for every birth at public hospitals. This covers both normal deliveries, deliveries through caesarean, and complicated deliveries. These funds are paid directly to the facilities. In addition, no fees will be charged for antenatal and post-natal care up to six weeks after delivery, or for referrals made in the case of complications related to pregnancies. All fees charged for all types of health-care services at dispensaries and health centres have also been abolished.

155. **The Kenya Health Policy 2012-2030** aims at attaining the highest standard of health in a manner responsive to population needs through supporting the provision of equitable, affordable and quality health care at the highest attainable standard to all Kenyans. Despite the advances made by Kenya in overcoming some development challenges, maternal and child health in Kenya remains a challenge. Statistics indicate that 43.8 per cent of births in Kenya were attended by skilled personnel in 2011.

156. According to the KDHS 2009 the contraceptive prevalence rate is 46 per cent against the MDG target of 56 per cent in 2015. The unmet need for family planning exists in roughly a quarter of all married women. HIV/AIDS still poses one of the greatest challenges in Kenya. HIV prevalence is largely highest among women at 8 per cent as compared to that of men at 4.3 per cent. Other key affected groups include sex workers, injecting drug users and MSM.

157. **Legislation**: Article 43(1) of the Constitution guarantees every individual the highest attainable standard of health and provides that no individual may at any moment be denied emergency medical care which is important to the realization of the right to life. Furthermore, Article 46 provides for the right to the protection of consumer health, safety and economic interests. On the other hand, Article 53(1)(c) specifically provides for the right of every child to adequate health care.

158. **The law and abortion**: By specifying conditions under which abortion may be legally provided, the Constitution addresses the toll caused by unsafe illegal abortion. This is indicated in Article 26(4).

159. **The positive measures have been put in by the Government through the National Council for persons with disabilities established by the Disability Act of 2003**. The main objective of the council, is to mainstream disability issues in all aspects of social cultural, economic and political development, including health. The new health policy 2012-2030 adopted a rights based approach to health and seeks to make the right to health for all Kenyans a reality. The constitution of Kenya in Article 54 emphasizes on the rights and freedoms of persons with disabilities. In 54(b) they are entitled to access educational facilities and institutions that are integrated into society to the extent compatible with the interests of the person.

160. **Training of community health workers**: The Kenya Essential Package for Health has been updated to include health education on GBV which had largely been seen as posing risk to women in the reproductive health-age bracket. Similarly, the Government has spearheaded the training and follow-up of health-care workers including community midwives in skilled care during pregnancy, child birth and thereafter launch of the maternal and neo-natal health roadmap on maternal health in 2010.

161. The second MTP (2013-2017) places more emphasis on primary health-care, access to clean water and better management of communicable diseases.

162. The Government has developed a Community Health Workers Training package. These health workers play a key role in conducting awareness on health issues in rural areas where a number of rural women can hardly access a professional health-care provider.

163. **Prevention of Mother-to-Child Transmission of HIV**: Adult HIV prevalence (ages 15-49) in Kenya, estimated at 6.3 per cent in 2009, has declined from 8.4 per cent

in 2001. Between 2009 and 2010, the number of new HIV infections among children in Kenya has declined 43 per cent — from 23,200 to 13,200.[6] HIV prevalence among pregnant women was 5.6 per cent in 2009, and in 2010, there were an estimated 87,000 pregnant women living with HIV in Kenya. The majority (92.5 per cent) of health facilities in Kenya offer PMTCT services.[7] HIV testing among pregnant women increased from 31 per cent in 2005 to 83 per cent in 2010,[8] and 67 per cent of pregnant women with HIV received efficacious ARVs for PMTCT in 2011. Kenya has adopted WHO Option A regimen for prophylaxis, and a Multisectoral National AIDS Strategic Plan (2009-2010 — 2012-2013) is in place, of which PMTCT is a component.[9]

164. Various efforts have been put in place by the Government in the fight against HIV. Kenya has adopted multisectoral strategies to respond to HIV, particularly Kenya National HIV and AIDS Strategic Plan (KNASP) I; KNASP II; and currently KNASP III. The KNASP III contains a National Action Plan for the prevention and treatment of HIV.

165. **Resources challenge**: The Government of Kenya's current allotment of Sh95 billion for health represents 5.7 per cent of the total budget, well below the 15 per cent required by Kenya's commitment to the Abuja Declaration. The current budget is a decrease from rates of 7.2 per cent in 2010, 6.1 per cent in 2011, and 5.9 per cent for 2012. It also falls short of the Ministry of Health's 2012 task force report, which called for a minimum of Sh217 billion for a three-year health stimulus package. Doctors and other stakeholders have expressed further concern that the Sh60 billion allotted to county governments will not be used entirely on health; given other priorities like infrastructure, salaries, and local development funds. Insufficient funds could jeopardize the success of the maternal health programme.

166. **Infrastructure, Equipment and Staffing challenge**: Recent survey data found that only 36 per cent of public health facilities offering delivery services had all the basic delivery room infrastructure and equipment needed, with rural areas and lower level facilities particularly unequipped. The Kenya Health Sector Strategic and Investment Plan (2012-2018) also estimates that current staff levels meet only 17 per cent of minimum requirements needed for effective operation of the health system. Kenya has only 7 nurses per 4,000 residents, half the number (14 per 4,000) recommended by the World Bank. These health workers are also unevenly distributed across the country.

167. **Access to Facilities**: The Kenya Demographic and Health Survey (2009), indicated that the largest percentage (42 per cent) of women who delivered outside a health facility did so because the facility was too far away or there was no transport to the facility, compared to only 17 per cent who cited the cost of delivery as the key barrier. The national and County Governments are working in equipping

[6] Joint United Nations Programme on HIV/AIDS, Together We Will End AIDS, 2012.

[7] WHO/UNICEF/UNAIDS, calculated from Universal Access country reported unpublished data, 2011.

[8] World Health Organization, Joint United Nations Programme on HIV/AIDS, United Nations Children's Fund, Towards Universal Access: Scaling up Priority HIV/AIDS Interventions in the Health Sector. Progress report, 2011.

[9] Joint United Nations Programme on HIV/AIDS, United Nations Children's Fund, Global Plan Towards the Elimination of New HIV Infections among Children by 2015 and Keeping Their Mothers Alive 2011-2015, 2011.

sub-county health facilities to meet the facility demands by the growing populations.

168. **Persons With Disabilities Challenge**: A public inquiry report launched by the Kenya National Commission Human Rights Commission in 2012 indicates that women with disabilities suffer stigma and discrimination when they seek reproductive health services.

169. **Challenge on PMTCT target**: Coverage of early infant diagnosis is moderate in Kenya. In 2010, 64 per cent of HIV-exposed infants received a virological test within two months of birth, but only 7 per cent received co-trimoxazole prophylaxis — an antibiotic that significantly reduces morbidity and mortality. Paediatric ART coverage also remains low, at 31 per cent in 2011, up from 19 per cent in 2009. Among pregnant women with HIV who received ARVs in 2010, 33 per cent still received single dose nevirapine, a regimen currently not recommended by WHO, and 27 per cent received ART. The Government has put in place measures for additional investments to strengthen the MNCH platform and for community engagement to create demand for services. Increase investments in building the capacity within MNCH services and communities (HR capacity building; equipment for MNCH and PMTCT; linkages/referrals mechanisms within/between facilities and with communities) for the provision of quality antenatal and postnatal follow up care through Health Sector plan 2012-2030.

Article 13: Measure for elimination of discrimination against women in other areas of social and economic life

170. Both the Government and Development Partners have increased the commitment to social protection interventions. Such measures include cash transfer programmes for orphans and vulnerable children (OVC), older persons, persons with disability, unemployed youth, and the chronically food insecure in the arid lands (the Hunger Safety Net Programme, HSNP).

171. **Legislation**: Article 27 of the Constitution provides for Equal and full enjoyment of rights; equal treatment in all spheres. Similarly, Article 43(e) rights to social security; (g) appropriate social security to persons who are unable to support themselves and their dependants.

172. **Social Assistance Act (2013)**: This is An Act of Parliament to give effect to Article 43(1)(e) of the Constitution; to establish the National Social Assistance Authority; to provide for the rendering of social assistance to persons in need and for connected purposes. Under this law financial and social assistance should be provided to poor orphans, vulnerable children, poor elderly persons, youth who are unemployed, disabled persons, widows and widowers, and people who have been disabled by acute chronic illness. The law creates the National Social Assistance Authority of Kenya with the power to pay for food, shelter, clothing, fuel, utilities, household supplies, personal requirements, health-care services, transportation expenses, funeral and burial expenses for those who qualify.

173. The Government of Kenya established the National Safety Net Programme targeting critical categories of Kenya's population. These are poor and vulnerable Older Persons above 65years of age, Orphaned and Vulnerable Children households, poor households with Persons with Severe Disabilities and food insecure households

in poor urban settlements and Northern arid Counties. The overall objective of the programme is to reduce poverty and vulnerability in Kenya by improving the wellbeing and resilience of cash transfer beneficiaries. The household receive monthly stipend of KES 2,000 given every two months at the rate of KES 4,000. The OVC impact assessment based on various surveys (2008-2013) shows that there is 15 per cent increase in consumption with a substantial improvement in dietary diversity of the household members. It also shows 13 per cent reduction in poverty levels of the beneficiary households. There has been reduction of child labour by 6 per cent, increased secondary enrolment by 6.6 per cent, increased primary school retention by 15 per cent and improved living dignity for beneficiaries.

174. An audit carried out of the cash transfer programme in 21 Sub-Counties in 2013 revealed that majority of the beneficiaries of the CT-OVC and OP-CT Programme were female 55 per cent of the beneficiaries for PWSD were female compared to 45 per cent male. Among the elderly benefiting from the OP-CT, 76 per cent are female and 24 per cent male. Almost all the beneficiaries of the CT-OVC are female at 88 per cent compared to male 12 per cent. The five cash transfer programmes are integrated at the moment through the Integrated Management Information Systems, though implemented by different government agencies, to ensure the policy of one eligible household per one programme. The OP-CT impact assessment has revealed that there has been improved health standards, improved food security in households, education for grandchildren, improvement in the general economic status of the beneficiaries, formation of social support networks and improvements in quality and quantity of household assets.

175. Legal Notice 114 of 2013 on the Public Procurement and disposal act Article 30 and 31 gives women, youth and Persons With Disabilities preferential treatment giving them access to tender opportunities and thereby advancing economic and social benefits. It obligates government Ministries Departments and Agencies to set aside 30 per cent of all government spending to these categories.

176. Matrimonial and Properties Act. Article 4 states that despite any other law a married woman has the same rights as a man a) to acquire, administer, hold, control, use and dispose of property whether moveable or immoveable and b) to enter into a contract c) to sue and be sued in her name parties to a marriage.

177. Legal Notice 21 of Public Finance Management Act: Uwezo (Ability) Fund has been established as a permanent fund following the passing of Uwezo fund Regulations through Legal Notice 21 of the Public Finance Management Act 2014 published on 21 February 2014 to empower women, youth and PWDs economically. The Fund encourages the concept of table banking for economic activities to supplement other government empowerment programmes towards the target group.

178. **Challenges**: The uptake on the 30 per cent procurement preference has been slow in the initial period Processes for registration but is now gaining momentum.

179. **Another challenge** is under-representation of Women in Devolved Funds Committees. There is insufficient representation of women in management committees of devolved funds whose main objective is poverty eradication such as in the Constituency Development Fund (CDF) Fund and LATF (Local Authority Transfer Fund).

Article 14: Measure to address the situation of rural women

180. **The Agricultural Sector Development Strategy 2010-2020 (ASDS)** is the overarching national policy document for the agricultural sector ministries and stakeholders in Kenya. This policy framework is anchored in the long-term development plan for Kenya, Vision 2030 whose main thrust is to transform Kenya into a middle income country by the year 2030. The strategy provides a guide for the public and private sectors' effort in overcoming development challenges facing the sector.

181. **Stimulating rural economic through legislation**: The Government of Kenya aims to stimulate the rural economy through three major reforms, from which dominant rural women in agriculture are expected to benefit from, all enacted in 2012:

- The Land Act, which mandates the National Land Commission to recommend policies on land, acquire land for public purposes, regulate land use in the public interest and allocate land for investment
- The Agriculture, Livestock, Fisheries and Food Authority Act, which establishes an authority to oversee the operation of the agricultural sector — including licensing, law enforcement and registration of farmers — and to promote and regulate the production, processing, marketing and transportation of agricultural products, advise the Government on agricultural policy, and build the capacity of county governments in relation to agriculture
- The Crops Act, which formulates policies for the development of scheduled crops, facilitates marketing and distribution of crops, conducts training for farmers, and establishes and enforces crop standards.

182. The Economic Empowerment Programme (EEP) is anchored on the Kenya Vision 2030 economic pillar of enhancing economic growth and reducing poverty. Its priority areas and expected outputs are enshrined in three critical components that underscore the programme centrality. The expected outcomes are ensuring; (i) inclusiveness of the poor and vulnerable are mainstreamed in institutional and policy framework as well as private sector participation in job-rich and pro-poor growth, (ii) the poor and vulnerable (particularly women and youth) are empowered as economic agents including ensuring that the poor and vulnerable access micro-finances and new technologies and (iii) coordination mechanisms for project implementation are operationalized, strengthened and supported by an effective platform for comprehensive public-private partnership.

183. **Table banking and the situation of rural women**: The Government launched the system with the aim of helping rural women access their own funds to start income generating projects. The concept allows women to save and access loans cheaply that would complement the efforts from the devolved government funds.

184. **Women's increased access to banking through mobile phone services**: More rural women have had access to mobile telephone and mobile phone money transfer services. Banks have increased their reach to rural women by opening banking agencies which are enfranchisements of commercial banks to increase access to the banking services. Access to technology has been adopted by non-state actors to training women on agri-business skills specifically in monitoring commodity markets.

Article 15: Equality of men and women before the law

185. **Women's experience** in access to legal services has been largely documented in Kenya. Women in particular face a number of obstacles including:

- The physical location of courts and lawyers is beyond the reach of most Kenyans who are situated in rural areas;
- Court and legal fees; most women (especially widows facing legal disputes about inheritance and property) cannot afford this;
- Although there are legal aid services, these have only reached some of those who require assistance; most of the legal aid programmes are situated in urban areas and are therefore not accessible to many people in rural areas;
- For those that have obtained legal aid, the length of the legal process can act as a deterrent. Claims can run for up to 6 years or more, which can lead poorer litigants to give up because justice is so delayed as to not be of any use;
- Although the Constitution and the Protocol provide for access to justice for women in Kenya, the power of customary law and practices cannot be underestimated. Custom and practice may vary from community to community and even family to family. There is therefore invisible power within communities, which will often dictate a woman's standing and how her rights will be determined, which may not accord with the formal written.

186. **Legislation**: Access to justice features in a number of Kenyan legislative provisions and is particularly prevalent throughout the Constitution, most notably, Article 22(1) and Article 48.

187. In addition to the various constitutional provisions, the Judicial Service Act aims to ensure that the Judicial Service Commission and the judiciary, to "facilitates access to justice to all Kenyans, be guided in their internal affairs, and in the discharge of their mandates by considerations of social and gender equity and the need to remove any historical factors of discrimination".

188. The Civil Procedures Act states that: "women who according to the customs and manners of their communities ought not to be compelled to appear in public shall be exempted from personal appearance in court in section 82. Section 86 of the Civil Procedure Act states that the language of the High Court and Court of Appeal is English and language of subordinated courts is English or Swahili. Translators are available to translate legal proceedings into all of Kenya's indigenous languages for those who do not speak either English or Swahili (the data of how many women do not speak Swahili is not available as while English and Swahili are the mandated national language, in the rural areas indigenous language is more frequently.

189. Adoption of the National Land Policy which recognizes the role of women in land matters. It proposes review of succession, matrimonial property and other related laws to ensure gender equity and the enactment of specific legislation governing division of matrimonial property to replace the English Married Women's Property Act of 1882. It provide for the protection of the rights of widows, widowers and divorcees through enactment of law on co-ownership of matrimonial property.

190. **Challenge**: The National Land Policy requires appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources during marriage, upon dissolution of marriage, and after death, and development of mechanisms to curb selling and mortgaging of family land without the involvement of spouses.

191. **Challenge**: The Matrimonial Property Act, which was duly gazetted into law on 10th January 2014, is discriminatory with regards to women's rights to land and property in Kenya. The Act, in brief, defines matrimonial property as only property that is jointly owned by the spouse, and disallows women the right to marital property upon the death or divorce of their spouse by requiring them to prove their contribution to the acquisition of the property during the marriage.

192. **The Law of Succession Act discriminates** against women in respect of inheritance rights. The Act's basic provisions guarantee equal inheritance rights for male and female children, and the equal right to produce a will by both male and female parents. However, Sections 32 and 33 of the Act expressly exclude all agricultural land, cattle and crops from legislated inheritance and instead places their succession under the purview of customary law as specifically defined by the appropriate minister in Kenya's official Gazette. For the aforementioned reasons, it is likely that decisions under these customary laws will discriminate against women and girls. In addition, rules governing 'intestate' succession create a hierarchy for inheritance which directly discriminates against women. Thus, under section 39 of the Act, priority in the absence of children or spouse is given to the father of the deceased over the mother. Furthermore, a woman's inheritance rights are made void should she remarry following the death of her husband.

193. **Another challenge** regard to equality before the law persist as some laws have built into them discriminatory provisions. The Penal Code Cap 63 (2012) 153 still assumes that a prostitute is a woman.

Article 16: Equality in marriage and the family

194. **Legislation**: Article 45(3) of the Constitution is one of the biggest achievements for women in the institution of marriage in the context of equality and non-discrimination. It states that Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage. It lays a minimum age of marriage at 18 years, thus outlawing child marriages that have, hitherto been a major handicap for Kenyan women.

195. **Marriage Act 2014**: It repeals the previous numerous pieces of legislation that had governed the institution of marriage, thus making it easier and more user friendly for women seeking matrimonial justice. It is one of the major victories for women in Kenya as it champions equality in marriage as well as reiterates the minimum age of marriage for all women across religious and cultural divides as outlined in Section 4 of the Act.

196. **Marriage definition**: For the first time in Kenya's history, the new law defines the institution of Marriage. According to section 3(1) Marriage is defined as a voluntary union between a man and a woman. Section 3(2) gives marriage partners equal rights. The age of consent is set at 18 for both man and woman. Any marriage must have two witnesses present excluding the person officiating it. The

law recognizes marriages under Christian tradition, civil tradition, customary law, Hindu tradition, Islamic tradition. All these marriages though recognized and must be registered (Sec 6(1)). Practices of other recognized groups or faiths may be notified in the Gazette (Sec 6(1) (f)).Accordingly Christian, Hindu or civil marriages are monogamous (Sec 6(2). Islamic and customary marriages on the other hand are potentially polygamous (Sec 6(3). Custody and maintenance of children remain under the Children's Act.

197. **Protection of customary marriage**: Customary marriages are now anchored in law and are now register able, thus making them less precarious and therefore offering more protection for women in customary marriages.

198. **The Matrimonial Property Act 2013**: The passing of the Matrimonial Property Act, 2013 replaces the archaic 1882 Married women's Property Act of England which had been applied since colonial times. It for the first time defines matrimonial property and creates space for prenuptial agreements. The new law states, inter alia, as follows: A married woman has the same rights as a married man to acquire, administer, hold, control, use and dispose of property whether movable or immovable; to enter into a contract; and to sue and be sued in her own name.

199. **Ownership of Matrimonial property** (Section 7) Where there is no prenuptial agreement, matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided (not equally) between the spouses.

200. **Property Rights in Polygamous Marriages (Section 8)**: If the parties in a polygamous marriage divorce or a polygamous marriage is otherwise dissolved:

- Matrimonial property acquired by the man and the first wife, before the man married another wife, shall be retained equally by the man and the first wife only;
- Matrimonial property acquired by the man after the man marries another wife shall be regarded as owned by the man and the wives taking into account any contributions made by the parties;
- It is possible for a wife to hold her matrimonial property with the husband separate from that of the other wives;
- Any wife can own matrimonial property equally with the husband without the participation of the other wife or wives.

201. **Special Provisions On Matrimonial Property (Section 12)**: Matrimonial property cannot be sold, leased or mortgaged during a monogamous marriage without the consent of both spouses. Spouses in marriages, including the man and any of the man's wives in the case of a polygamous marriage, have an interest in matrimonial property capable of protection by caveat, caution or any law in force on registration of title deeds. A spouse shall not, during the subsistence of the marriage, be evicted from the matrimonial home by or at the instance of the other spouse except by order of a court. A spouse shall not be evicted from the matrimonial home by any person except-in execution of a decree; by a trustee in bankruptcy; or by a mortgagee or chargee in exercise of a power of sale or other remedy and The matrimonial home shall not be mortgaged or leased without the written and informed consent of both spouses.

202. **Presumptions to property acquired during marriage (Section 14)**: Where matrimonial property is acquired during marriage: in the name of one spouse, there is a presumption that the property is held in trust for the other spouse; and in the names of the spouses jointly, there's a presumption that their beneficial interests in the matrimonial property are equal.

203. **Proof of contribution**: The Matrimonial Property Act, though a milestone in the history of matrimonial property law in the country and has enormous benefits for women in marriages, the requirement for spouses to prove their contribution to the acquisition of the property during the marriage makes it difficult for women to access matrimonial property.

204. **Recent jurisprudence by the high court has, however, reaffirmed the equality provisions of the Constitution, thus watering down the above stated provision in the Matrimonial Property Act, 2013**. In the recent case of *CMN v AWM*, the Court reaffirmed Article 45(3) of the Constitution.[10] In the matter, the High Court stated that as far as the division of matrimonial property is concerned, the Judiciary is now guided by the principles of equality and not by the principles of law set in *Echaria v Echaria*,[11] which focused on the contribution made by each spouse to the acquisition of the property. As such, the Court held, contrary to the plaintiff's claim, that both parties to the suit were each entitled to half a share of the property in dispute.

205. **Polygamy**: The Constitution of Kenya in Article 45(4) permits polygamy. It mandates Parliament with the task of enacting legislation that recognizes marriages concluded under any tradition, or system of religious, personal or family law.

206. **Challenges**; Polygamy has onerous implications on women. It serves to reinforce male dominance and subjugation of women in the private sphere of marriage. If the constitutional and legislative provisions that sanction polygamy are not changed, they will disadvantage women as various males will choose a second wife in order to constrain the women bargaining powers in the relationships. Polygamy also runs counter to the very Constitution that outlaws discrimination and inequality of sexes.

207. **Challenges**: The incongruence existing in the Constitution, the Matrimonial Property Act and the Land Registration Act, 2013 need to be addressed if inequality and non-discrimination for women in Kenya are not to remain mere rhetoric.

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[10] *CMN v AWM* Environment and Land Case 208 of 2012, eKLR.
[11] *Echaria* (n 53).